

[4830-01-u]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[TD 8739]

RIN 1545-AV09

IRS Adoption Taxpayer Identification Numbers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations under section 6109 relating to taxpayer identifying numbers. The final regulations include a cross reference to the temporary regulations, which provide rules for obtaining and using IRS adoption taxpayer identification numbers. The temporary regulations assist individuals who are in the process of adopting children and wish to claim certain tax benefits with respect to those children. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These regulations are effective November 24, 1997.

FOR FURTHER INFORMATION CONTACT: Michael L. Gompertz, (202) 622-4910 (not a toll-free number).

## SUPPLEMENTARY INFORMATION:

**Paperwork Reduction Act**

These final and temporary regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-1564. Responses to this collection of information are required to obtain a taxpayer identification number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Background**

This document contains amendments to the Regulations on Procedure and Administration (26 CFR Part 301) relating to identifying numbers under section 6109. Section 6109(a)(1) provides that any person required to make a return, statement, or other document must include in the document such identifying number as may be prescribed for securing proper identification of the person. Section 6109(a)(2) provides that any person with respect to whom a return, statement, or other document is required to be made by another person or whose identifying number must be shown on a return of another person, must furnish to the other person such identifying number as may be prescribed for securing the person's proper identification. Section 6109(d) provides that an individual must use a social security number as the individual's taxpayer identification number unless the Secretary prescribes otherwise by regulations.

Currently, there are three types of taxpayer identification numbers (TINs) assigned to individuals: (1) a social security number (SSN), (2) an IRS individual taxpayer identification number (ITIN) assigned to an alien individual who is ineligible to obtain an SSN, and (3) an employer identification number (EIN) assigned to an individual who is engaged in a trade or business as a sole proprietor. An SSN is assigned by the Social Security Administration. An ITIN or an EIN is assigned by the IRS.

Section 1615 of the Small Business Job Protection Act of 1996 (Public Law 104-188, 110 Stat. 1755, 1853 (1996)) added

sections 21(e)(10) and 151(e) to deny the dependent care credit and the deduction for the dependency exemption if the TIN (as defined by section 6109 and the regulations thereunder) of the dependent is not included on the return claiming the credit or deduction. Sections 21(e)(10) and 151(e) generally are effective for tax returns due (without regard to extensions) after September 18, 1996.

In addition, section 101 of the Taxpayer Relief Act of 1997 (Public Law 105-34, 111 Stat. 788, 796 (1997)) added section 24 to the Code to provide a child tax credit for each qualifying child, effective for taxable years beginning after December 31, 1997. Pursuant to section 24(e), the taxpayer will be denied the credit if the qualifying child's TIN is not included on the return claiming the credit.

In most cases, taxpayers can meet the TIN requirements of sections 21, 24, and 151 by including a child's SSN on the return claiming the credit or deduction. In the case of adoption, however, a child may not have an SSN or, if the child does have an SSN, the taxpayer adopting the child (the prospective adoptive parent) may be unable to obtain the SSN because of confidentiality laws. See H.R. Rep. No. 542, 104th Cong., 2d Sess. 20 (1996); S. Rep. No. 412, 103d Cong., 2d Sess. 163 (1994).

#### **Explanation of Provisions**

These temporary regulations authorize the IRS to assign a new form of taxpayer identification number, the IRS adoption

taxpayer identification number (ATIN), to a child who is in the process of being adopted (a prospective adoptive child). The regulations are effective for income tax returns due (without regard to extension) on or after April 15, 1998.

The temporary regulations provide that an ATIN is a temporary taxpayer identification number that expires two years after the date of issuance. However, upon application, the IRS may grant an extension of the ATIN. A prospective adoptive parent may apply for an ATIN for a child if: (1) the prospective adoptive parent is eligible to claim a personal exemption under section 151 with respect to the child; (2) the child is placed with the prospective adoptive parent for legal adoption by an authorized placement agency (as defined in §1.152-2(c)); (3) the Social Security Administration will not assign the prospective adoptive parent an SSN for the child (for example, because the adoption is not final); and (4) the prospective adoptive parent has used all reasonable means to obtain the child's assigned SSN, if any, but has been unsuccessful in obtaining this number (for example, because the birth parent who obtained the number is not legally required to disclose the number to the prospective adoptive parent).

The temporary regulations provide that an application for an ATIN must be made on the Form W-7A, Application for Taxpayer Identification Number for Pending Adoptions, or such other form prescribed by the IRS. The ATIN application must be accompanied by documentary evidence to establish that an authorized placement

agency placed the child in the prospective adoptive parent's household for legal adoption by the parent. Such documentary evidence may include: a copy of a placement agreement entered into between the prospective adoptive parent and an authorized placement agency; an affidavit signed by the adoption attorney or government official who placed the child for legal adoption pursuant to state law; a document authorizing the release of a newborn child from a hospital to a prospective adoptive parent for adoption; or a court document ordering or approving the placement of a child for adoption.

When an adoption becomes final, the adoptive parent must apply for an SSN for the child. Once obtained, the SSN, rather than the ATIN, must be used as the child's TIN on all future returns, statements, or other documents required by the Code.

An ATIN may be used by the prospective adoptive parents to meet the TIN requirements of sections 21(e)(10), 24(e), and 151(e), relating to the dependent care credit, the child tax credit, and the dependency exemption, respectively. Also, as may be prescribed by forms, instructions, or otherwise, an ATIN may be used to meet the TIN requirements under sections 23(f) and 137(e), relating to qualified adoption expenses. The ATIN may not be used to meet the TIN requirement of section 32. See section 32(1).

The ATIN procedures do not apply to adoptions involving alien children. Generally, the Social Security Administration will assign an SSN to an alien child if all the requirements for

assigning a number are met. When the Social Security Administration cannot assign an SSN, the child generally will be eligible for an ITIN.

In addition to adoptions involving alien children, there are two other types of adoptions to which the ATIN procedures may not apply. If the child placed for adoption is a foster child or is otherwise in the custody of a government agency or court (because, for example, the birth parents' rights were previously terminated for abuse or neglect), the government agency or court will generally obtain an SSN for the child and can make the SSN available to the prospective adoptive parent. Also, the prospective adoptive parent may be able to obtain the child's SSN from the birth parents (or other person) in the case of an adoption by the child's relatives or an adoption in which the adoptive parent and birth parent share information about the child and themselves.

Taxpayers are invited to comment on two issues partially addressed by the temporary regulations. First, comments are requested regarding what types of documents are available to establish that a child has been placed in the prospective adoptive parent's household for legal adoption. Also, comments are requested as to whether certain types of adoptions (in addition to foreign adoptions) should be completely excluded from the ATIN process. In particular, comments are requested regarding whether a prospective adoptive parent is always able to obtain a prospective adoptive child's SSN if the child is a

foster child or is otherwise in the custody of a government agency or court.

### **Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Only individuals may receive ATINs under this Treasury decision, and an individual is not a small entity as defined in the Regulatory Flexibility Act. See 5 U.S.C. 601(6).

Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### **Drafting Information**

The principal author of these regulations is Michael L. Gompertz of the Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

### **List of Subjects**

26 CFR Part 301



Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

### **Adoption of Amendments to the Regulations**

Accordingly, 26 CFR parts 301 and 602 are amended as follows:

#### **PART 301--PROCEDURE AND ADMINISTRATION**

Paragraph 1. The authority citation for part 301 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Section 301.6109-1T also issued under 26 U.S.C. 6109;

Section 301.6109-3T also issued under 26 U.S.C. 6109; \* \* \*

Par. 2 Section 301.6109-1 is amended by adding paragraph (h)(2)(iii) to read as follows:

§301.6109-1 Identifying numbers.

\* \* \* \* \*

(h) \* \* \*

(2) \* \* \*

(iii) Paragraphs (a)(1)(i), (a)(1)(ii) introductory text, (a)(1)(ii)(A), and (a)(1)(ii)(B) of this section do not apply after November 24, 1997. For further guidance after November 24, 1997, see §301.6109-1T(a)(1)(i), (a)(1)(ii) introductory text, and (a)(1)(ii)(A) and (a)(1)(ii)(B).

Par. 3. Sections 301.6109-1T is added to read as follows:

§301.6109-1T Identifying numbers (temporary).

(a) In general--(1) Taxpayer identifying numbers--(i) Principal types. There are four principal types of taxpayer identifying numbers: social security numbers, Internal Revenue Service (IRS) individual taxpayer identification numbers, employer identification numbers, and IRS adoption taxpayer identification numbers. Social security numbers take the form 000-00-0000. IRS individual taxpayer identification numbers and IRS adoption taxpayer identification numbers also take the form 000-00-0000 but include a specific number or specific numbers designated by the IRS. Employer identification numbers take the form 00-0000000.

(ii) Uses. Social security numbers, IRS individual taxpayer identification numbers, and IRS adoption taxpayer identification numbers are used to identify individual persons. For the definition of social security number and employer identification number, see §§301.7701-11 and 301.7701-12, respectively. For the definition of IRS individual taxpayer identification number, see §301.6109-1 (d)(3). For the definition of IRS adoption taxpayer identification number, see §301.6109-3T. Except as otherwise provided in applicable regulations under this title or on a return, statement, or other document, and related instructions, taxpayer identifying numbers must be used as follows--

(A) Except as otherwise provided in §301.6109-1(a)(1)(ii)(D), paragraph (a)(1)(ii)(B) of this section, and

§301.6109-3T, an individual required to furnish a taxpayer identifying number must use a social security number.

(B) Except as otherwise provided in §301.6109-1(a)(1)(ii)(D) and §301.6109-3T, an individual required to furnish a taxpayer identifying number but who is not eligible to obtain a social security number must use an IRS individual taxpayer identification number.

(a)(1)(ii)(C) through (g) **[Reserved]**. For further guidance, see §301.6109-1(a)(1)(ii)(C) through (g).

(h) Effective date. Paragraphs (a)(1)(i), (a)(1)(ii) introductory text, (a)(1)(ii)(A), and (a)(1)(ii)(B) of this section are applicable after November 24, 1997. For guidance applicable prior to November 24, 1997, see §301.6109-1(a)(1)(i), (a)(1)(ii) introductory text, (a)(1)(ii)(A) and (a)(1)(ii)(B).

Par. 4. Section 301.6109-3T is added to read as follows:  
§301.6109-3T IRS adoption taxpayer identification numbers  
(temporary).

(a) In general--(1) Definition. An IRS adoption taxpayer identification number (ATIN) is a temporary taxpayer identifying number assigned by the Internal Revenue Service (IRS) to a child (other than an alien individual as defined in §301.6109-1(d)(3)(i)) who has been placed, by an authorized placement agency, in the household of a prospective adoptive parent for legal adoption. An ATIN is assigned to the child upon application for use in connection with filing requirements under this title. When an adoption becomes final, the adoptive parent

must apply for a social security number for the child. After the social security number is assigned, that number, rather than the ATIN, must be used as the child's taxpayer identification number on all returns, statements, or other documents required under this title.

(2) Expiration and extension. An ATIN automatically expires two years after the number is assigned. However, upon request, the IRS may grant an extension if the IRS determines the extension is warranted.

(b) Definitions. The following definitions apply for purposes of this section--

(1) Authorized placement agency has the same meaning as in §1.152-2(c) of this chapter;

(2) Prospective adoptive child or child refers to a child who has not been adopted, but who has been placed in the household of a prospective adoptive parent for legal adoption by an authorized placement agency; and

(3) Prospective adoptive parent or parent refers to an individual in whose household a prospective adoptive child is placed by an authorized placement agency for legal adoption.

(c) General rule for obtaining a number--(1) Who may apply. A prospective adoptive parent may apply for an ATIN for a child if--

(i) The prospective adoptive parent is eligible to claim a personal exemption under section 151 with respect to the child;

(ii) An authorized placement agency places the child with the prospective adoptive parent for legal adoption;

(iii) The Social Security Administration will not process an application for an SSN by the prospective adoptive parent on behalf of the child (for example, because the adoption is not final); and

(iv) The prospective adoptive parent has used all reasonable means to obtain the child's assigned social security number, if any, but has been unsuccessful in obtaining this number (for example, because the birth parent who obtained the number is not legally required to disclose the number to the prospective adoptive parent).

(2) Procedure for obtaining an ATIN. If the requirements of paragraph (c)(1) of this section are satisfied, the prospective adoptive parent may apply for an ATIN for a child on Form W-7A, Application for Taxpayer Identification Number for Pending Adoptions (or such other form as may be prescribed by the IRS). An application for an ATIN should be made far enough in advance of the first intended use of the ATIN to permit issuance of the ATIN in time for such use. An application for an ATIN must include the information required by the form and accompanying instructions, including the name and address of each prospective adoptive parent and the child's name and date of birth. In addition, the application must include such documentary evidence as the IRS may prescribe to establish that a child was placed in the prospective adoptive parent's household by an authorized

placement agency for legal adoption. Examples of acceptable documentary evidence establishing placement for legal adoption by an authorized placement agency may include--

(i) A copy of a placement agreement entered into between the prospective adoptive parent and an authorized placement agency;

(ii) An affidavit signed by the adoption attorney or government official who placed the child for legal adoption pursuant to state law;

(iii) A document authorizing the release of a newborn child from a hospital to a prospective adoptive parent for adoption; and

(iv) A court document ordering or approving the placement of a child for adoption.

(d) Effective date. The provisions of this section apply to income tax returns due (without regard to extension) on or after April 15, 1998.

PART 602--OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 6. Section 602.101(c) is amended by adding an entry in numerical order to the table to read as follows:

§602.101 OMB Control numbers.

\* \* \* \* \*

(c) \* \* \*

| CFR part or section where<br><u>identified and described</u> | Current OMB<br><u>control No.</u> |
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| 301.6109-3T . . . . .  | 1545-1564                         |
| * * * * *  |                                   |

Acting Commissioner of Internal Revenue  
Michael P. Dolan

Approved: October 24, 1997

Acting Assistant Secretary of the Treasury  
Donald C. Lubick